

**509.308-2 Testing performed by the Government.**

In FSS solicitations and contracts that will have the Government responsible for first article testing, insert 552.209.73, Supplemental Requirements for First Article Approval—Government Testing, and FAR 52.209-4, Alternate I.

**Subpart 509.4—Debarment, Suspension, and Ineligibility****509.401 Applicability.**

This subpart applies to all the following:

- (a) Acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (Federal Property Management Regulations (FPMR) Subpart 101-40.4).
- (b) The purchase, sale, and disposal of real property.
- (c) Contracts for disposal of personal property (FPMR Subpart 101-45.6).
- (d) Covered transactions as defined at General Services Property Management Regulations (GSPMR) 105-68.110(a).

**509.403 Definitions.**

*Fact-finding official*, means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals or a designee.

*Notice* means a letter sent by certified mail, return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

**509.405 Effect of listing.****509.405-1 Continuation of current contracts.**

(a) Consider terminating a current contract under any of the following circumstances:

- (1) Any of the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract.

(2) The contractor presents a significant risk to the Government in completing the contract.

(3) The conduct that provides the cause of the suspension, proposed debarment, or debarment involved a GSA contract.

(b) Determine which of the following is in the Government's best interest:

- (1) Terminate the contract for either convenience or cause.
- (2) Cancel under appropriate contract clauses (e.g., 552.238-73, Cancellation).
- (3) Use other available alternatives under:

- (i) FAR 3.2 and 503.2.
- (ii) FAR 3.7 and 503.7.
- (c) Before making a decision, consult with legal counsel and consider these factors:

- (1) Seriousness of the cause for debarment or suspension.
- (2) Extent of contract performance.
- (3) Potential costs of termination and reprocurement.
- (4) Need for or urgency of the requirement, contract coverage, and the impact of delay for reprocurement.
- (5) Availability of other safeguards to protect the Government's interest until completion of the contract.
- (6) Availability of alternate competitive sources to meet the requirement (e.g., other multiple award contracts, readily available commercial items, etc.).
- (d) The debarring official is the designee under FAR 9.405-1(c).

**509.405-2 Restrictions on subcontracting.**

The debarring official is the designee under FAR 9.405-2(a).

**509.406 Debarment.****509.406-1 General.**

The debarring official is the designee under FAR 9.406-1(c).

**509.406-3 Procedures.**

(a) *Investigation and referral.* (1) Refer to the debarring official matters involving serious contract improprieties or performance deficiencies. Performance deficiencies that continue over a period of time or apply to more than one contract may warrant debarment consideration.

(2) Refer possible criminal or fraudulent activities to the Office of the Inspector General (OIG). See 5 CFR 6701.107, Reporting Waste, Fraud, Abuse, and Corruption. If, after investigation, the OIG believes a cause for debarment exists, it will refer the matter to the debarring official for consideration of debarment action.

(b) *Reports.* Include in referrals to the debarring official a report that contains at least the following:

(1) The recommendation and supporting rationale.

(2) A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include last known home and business addresses, zip codes, and DUNS Number.

(3) A statement of facts.

(4) Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.

(5) GSA's acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on GSA programs. OIG referrals do not require this explanation; the debarring official will obtain the information directly from the contracting activity(s).

(6) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.

(7) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General; the debarring official will obtain a statement directly from the contracting activity(s).

(c) *Review.* The debarring official will review the report, and after coordinating with assigned legal counsel, either:

(1) Initiate debarment action.

(2) Decline debarment action.

(3) Request additional information.

(4) Refer the matter to the OIG for further investigation and development of a case file.

(d) *Decisionmaking process.* (1) The debarring official will provide:

(i) Notice of declinations, proposed debarments, and decisions to the referring activity.

(ii) Notice of proposed debarment to each party being considered for debarment.

(iii) Decision notices to each party after considering information in the administrative record and information and argument submitted by the affected party or parties.

(2) A party proposed for debarment:

(i) Has 30 calendar days after receipt of the notice to respond to the debarring official or the debarment becomes final.

(ii) May request and receive a copy of the administrative record that was the basis for the proposed debarment. If information is withheld, the party will be notified and provided the reason.

(iii) May request the opportunity to present information and argument in person to the debarring official. The debarring official will schedule an oral presentation within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. An oral presentation is informal and a transcript usually is not made. The party may supplement the oral presentation with written information and arguments.

(iv) May identify to the debarring official material facts in dispute and the bases. For an action other than one based on a conviction of civil judgment, a party may request review and a written finding by a fact-finding official.

(3) The debarring official will determine whether there is a genuine dispute of material fact. If so, the debarring official refers the matter to a fact-finding official, who will take the following action as appropriate:

(i) Schedule a hearing within 20 calendar days after receipt of a request to resolve disputed facts.

(ii) Grant extensions for good cause.

(iii) Provide notice of scheduled hearing.

(iv) Conduct hearings under rules consistent with FAR 9.406-3(b)(2).

(v) Resolve facts in dispute and provide the debarring official with written

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findings of fact based on a preponderance of the evidence. The fact-finding official provides the written findings of fact (together with a transcription of the proceeding, unless waived) within 20 calendar days after the hearing record closes.

### 509.407 Suspension.

#### 509.407-1 General.

The suspending official is the designee under FAR 9.407-1(d).

#### 509.407-3 Procedures.

(a) *General.* The procedures in 509.406-3 apply to suspension actions except as noted in paragraph (b) of this section.

(b) *Fact-finding.* (1) Fact-finding will not be conducted in an action:

(i) Based on an indictment.

(ii) When the suspending official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the suspending official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the suspending official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:

(i) Identify to the suspending official material facts in dispute and the bases.

(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see 509.406-3(d)(3).

## PART 511—DESCRIBING AGENCY NEEDS

### Subpart 511.1—Selecting and Developing Requirements Documents

Sec.

511.104 Use of brand name or equal purchase descriptions.

511.104-70 Solicitation provisions.

### Subpart 511.2—Using and Maintaining Requirements Documents

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### Subpart 511.4—Delivery or Performance Schedules

511.404 Contract clauses.

### Subpart 511.6—Priorities and Allocations

511.600 Scope of subpart.

511.601 Definitions.

511.602 General.

511.603 Procedures.

511.604 Solicitation provision and contract clause.

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### Subpart 511.1—Selecting and Developing Requirements Documents

#### 511.104 Use of brand name or equal purchase descriptions.

##### 511.104-70 Solicitation provisions.

(a) Include the following immediately after each brand name or equal item description, with instructions for the offeror to complete the information:

Offering on:

Manufacturer's Name \_\_\_\_\_

Brand \_\_\_\_\_

Model or Part No. \_\_\_\_\_

(b) If the solicitation does not require samples for "or equal" offers, include the following notice in the list of brand name or equal items or component parts:

#### NOTICE

If you offer other than brand name items identified in this solicitation, you must provide adequate information for GSA to determine the quality of the product(s) offered.

(c) If you use brand name or equal purchase descriptions for some component parts of an end item, you may limit the application of the provision at FAR 52.211-6 to the specified components

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